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10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA**

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13 In re LIDODERM ANTITRUST LITIGATION

14 MDL Docket No. 14-md-02521-WHO

15 THIS DOCUMENT RELATES TO:
16 END-PAYOR PLAINTIFF ACTIONS

17 **FINAL JUDGMENT AND ORDER**

1 On March 20, 2018, End-Payor Plaintiffs¹, on behalf of themselves and the End-Payor Class,
 2 entered into separate settlement agreements with (a) defendant Endo Pharmaceuticals Inc. (“Endo”);
 3 (b) defendants Teikoku Pharma USA, Inc. and Teikoku Seiyaku Co., Ltd. (together, “Teikoku”); and
 4 (c) defendants Actavis, Inc. (f/k/a Watson Pharmaceuticals, Inc.), Watson Laboratories, Inc., and
 5 Actavis plc (together, “Watson” and together with Endo and Teikoku, “Defendants”) (the “Settlement
 6 Agreements”). The Court preliminarily approved the Settlements on May 1, 2018.

7 The Court has considered End-Payor Plaintiffs’ Motion for Final Approval, including all
 8 arguments and briefing presented and any opposition thereto, as well as any objections to the
 9 Settlements. The Court finds that the Settlements warrant final approval.

10 The Court **GRANTS** the Motion and **ORDERS** as follows:

11 1. Terms capitalized in this Order and not otherwise defined herein have the same
 12 meanings as those used in the Settlement Agreements and exhibits thereto.

13 I. **Final Approval**

14 2. This Court has subject matter jurisdiction over this action and each of the parties to the
 15 Settlements.

16 3. The members of the End-Payor Class were provided with notice of this action after the
 17 Court certified the End-Payor Class. At that time, all End-Payor Class members were given the
 18 opportunity to exclude themselves from the End-Payor Class. After the Court preliminarily approved
 19 the Settlements, members of the End-Payor Class were provided with notice of the Settlements
 20 through the Court-approved Notice and Claims Plan. Notice was distributed via both direct mail and
 21 publication notice. The Court finds that the End-Payor Class was reasonably and sufficiently notified
 22 of the Settlements in accordance with Federal Rule of Civil Procedure 23.

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 25 ¹ Allied Services Division Welfare Fund, City of Providence, International Union of Operating
 26 Engineers Local 49 Health and Welfare Fund, International Union of Operating Engineers Local 132
 27 Health and Welfare Fund, Iron Workers District Council of New England Welfare Fund, NECA-IBEW
 28 Welfare Trust Fund, United Food and Commercial Workers Local 1776 & Participating Employers
 Health and Welfare Fund, Welfare Plan of the International Union of Operating Engineers Locals 137,
 137A, 137B, 137C, 137R, and Ottavio Gallotto.

1 4. The Court finds that the proposed Settlements are fair, reasonable, and adequate within
 2 the meaning of Federal Rule of Civil Procedure 23 and are hereby approved. The Settlements were
 3 entered into after substantial discovery, pretrial preparations, and arm's-length negotiations by
 4 experienced counsel with the assistance of court-ordered mediation. There is no indicia that the
 5 Settlements were the product of collusion between Co-Lead Counsel for the End-Payor Class and
 6 Defendants.

7 5. The Settlements collectively provide \$104.75 million in cash to settle the claims of the
 8 End-Payor Class. This amount is approximately 46% of End-Payor Plaintiffs' highest single damages
 9 claim they would have sought at trial (\$229 million). *See Rodriguez v. West Publishing Corp.*, 563
 10 F.3d 948, 964-65 (9th Cir. 2009) (antitrust settlement for 30% of plaintiffs' estimated damages was
 11 "fair and reasonable no matter how you slice it"); *Edwards v. Nat'l Milk Producers Federation*, 2017
 12 WL 3623734, at * 2 (N.D. Cal. June 26, 2017) (that settlement was 30% of estimated indirect
 13 purchaser damages "strongly weighs in favor of granting final approval"); *In re High-Tech Employee*
 14 *Antitrust Litig.*, 2015 WL 5159441, at *4 (N.D. Cal. Sept. 2, 2015) (approving total settlements that
 15 were 14% of the class damages estimate, and noting that "District courts in the Ninth Circuit
 16 routinely approve settlements with much larger differences between the settlement amount and
 17 estimated damages.").

18 6. All members of the End-Payor Class shall be bound by the Settlement Agreements and
 19 all of their terms. Excluded from the End-Payor Class are the following entities: Carter Bank & Trust;
 20 CVS Health Corporation; Darby Dental Supply, LLC; Powell's City of Books; Rite Aid Corporation;
 21 The Western Union Co.; Wisconsin Evangelical Lutheran Synod; and Wood Group Management
 22 Services, Inc. *See* ECFs 946 and 997.

23 7. The claims of the End-Payor Class, including entities that opted out and later rejoined
 24 the End-Payor Class (ECF 997), in this litigation are dismissed with prejudice and without costs.
 25 Accordingly, the End-Payor Plaintiffs' Corrected Third Consolidated Amended Complaint (ECF 208)
 26 and Government Employees Health Association's Second Amended Complain (ECF 123)
 27 ("Complaints") are hereby dismissed with prejudice and without costs.

1 8. Upon the Settlements becoming final in accordance Paragraph 5 of each Settlement
 2 Agreement, Releasors (defined in the Settlement Agreements to include, among others, each of the
 3 End-Payor Plaintiffs and members of the End-Payor Class, including entities that opted out and later
 4 rejoined the End-Payor Class (ECF 997)), release, forever discharge, and covenant not to sue the
 5 Releasees with respect to any and all Released Claims.

6 9. The Settlements and this Judgment and Order shall not be deemed or construed to be an
 7 admission or evidence of any violation of any statute or law or lack thereof, of any liability or
 8 wrongdoing by Defendants or lack thereof, or of the truth or lack thereof of any of the claims or
 9 allegations contained in the Complaints or any other pleading, and evidence thereof shall not be
 10 discoverable or used directly or indirectly, in any way other than to enforce the terms of this
 11 Settlement Agreement.

12 10. There is no just reason for delay in the entry of this Judgment and Order, and the Clerk
 13 of the Court is directed to immediately enter final judgment dismissing with prejudice the End-Payor
 14 Class's and Government Employees Health Association's claims against Defendants. Such judgment
 15 shall be final.

16 11. The Court retains exclusive jurisdiction to consider all further matters arising out of or
 17 connected with the Settlements and the Settlement Agreements, including the administration and
 18 consummation of the Settlements.

19 12. For a period of five years, the Clerk of the Court shall maintain the record of the
 20 entities that have excluded themselves from the End-Payor Class (which are identified in ECF 946, as
 21 modified by ECF 997) and that a certified copy of such records shall be provided to Defendants.

22 **II. Plan of Allocation**

23 13. “[A]n allocation formula need only have a reasonable, rational basis, particularly if
 24 recommended by experienced and competent counsel.” *Rieckborn v. Velti PLC*, 2015 WL 468329, at
 25 *8 (N.D. Cal. Feb. 3, 2015) (citation omitted). The Court finds that the Plan of Allocation is fair,
 26 reasonable, and adequate and is hereby approved.

27 14. The Court finds that the allocation of the proceeds of the Settlements among consumers
 28 and third-party payors is fair and reasonable. The *pro rata* allocation of the consumer pool among

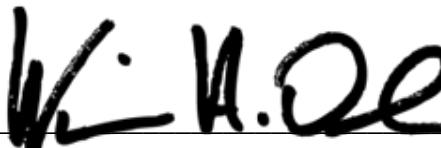
1 eligible consumer claimants and the third-party payor pool among third-party payor claims is also fair
2 and reasonable. *See In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2015 WL 9266493, at *8 (N.D.
3 Cal. Dec. 17, 2015) (use of *pro rata* allocation plan “has frequently been determined to be fair,
4 adequate, and reasonable in comparable cases”) (collecting cases).

5 15. Although certain large insurers that had previously opted out of the End-Payor Class
6 and have decided to return to the End-Payor Class may receive an initial portion of their claims
7 payment before other claimants, the insurers will only receive their *pro rata* share of the settlement
8 proceeds subject to a “true-up” adjustment after all claims are submitted, and any initial payment will
9 not delay the distribution of settlement funds to other class members.

10 16. While EPPs’ settlement notice and administration efforts are ongoing, and the final
11 costs for those efforts are presently unknown, based on the estimated costs provided by EPPs’
12 settlement administrator, the Court authorizes payment from the Settlement Fund of the reasonable
13 costs of settlement notice and administration actually incurred, up to \$725,000. In the event
14 settlement notice and administration costs exceed \$725,000, EPPs may submit a request to the Court
15 to authorize payment of the additional amount.

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17 **IT IS SO ORDERED.**

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19 DATED: September 20, 2018



20 THE HONORABLE WILLIAM H. ORRICK
21 United States District Court Judge
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